Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-93

Glynn Reine, Emile Aime, Gary Badin and Mike LeBlanc,

Appellees,

versus

Town of Sorrento Municipal Democratic Committee, et als, Percy Boudreaux, A. J. Kling, J. B. Melancon, Roy Melancon, Emile Lambert, R. E. Champagne, Morris Geautreau, Roland Melancon and the Town of Sorrento Democratic Executive Committee,

Appellants.

On Appeal from the United States District Court for the Middle District of Louisiana (Three-Judge Court)

JURISDICTIONAL STATEMENT

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OCTOBER TERM, 1975

No.

Glynn Reine, Emile Aime, Gary Padin and Mike LeBlanc,

Appellees,

versus

Town of Sorrento Municipal Democratic Committee, et als, Percy Boudreaux, A. J. Kling, J. B. Melancon, Roy Melancon, Emile Lambert, R. E. Champagne, Morris Geautreau, Roland Melancon and the Town of Sorrento Democratic Executive Committee,

Appellants.

On Appeal from the United States District Court for the Middle District of Louisiana (Three-Judge Court)

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the District Court dated April 18, 1975, is unreported. A copy of this opinion is appended hereto.

JURISDICTION

1. This action was filed on April 3, 1973, in the United States District Court, Middle District of Louisiana, by four registered voters of the Town of Sorrento, three of whom were unsuccessful candidates for positions on the Town Council of the Town of Sorrento in the municipal election held on March 24, 1973. The action was brought against members of the Town of Sorrento Municipal Democratic Executive Committee, members thereof, the Secretary of State, State of Louisiana, the Town Council of the Town of Sorrento, and members of the Town Council of the Town of Sorrento who were elected March 24, 1973. The complaint sought invalidation of the elections for the Town of Sorrento Town Council held on March 24, 1973. Jurisdiction was based on 42 U.S.C. §1973 C and §1973 J(f) and 28 U.S.C. §1343 (3) and (4), §2201 and §2202 and §2284.

2. The Judgment or decree sought to be reviewed is dated and filed April 18, 1975. Notice of Appeal was filed in the District Court on May 16, 1975.

3. Jurisdiction of this appeal is conferred by 28 U.S.C. §1253.

4. The following cases sustain the jurisdiction of the Court:

Mahan v. Howell, 410 U.S. 315 (1973); *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187 (1972); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962); and especially *United States v. Crescent Amusements Co.*, 323 U.S. 173 (1944). *But see, Bailey v.*

Patterson, 369 U.S. 31 (1962); *Turner v. City of Memphis*, 369 U.S. 350 (1962); *Phillips v. United States*, 312 U.S. 246 (1941); and *William Jameson & Company v. Morgenthau*, 307 U.S. 171 (1939).

5. The validity of the statute of a state is involved, the text of, ACT NO. 106 of 1972, LSA-R.S. 18:309 E, reading as follows:

> "E. Whenever in any district, parish, municipality or ward of the state there are two or more offices of the same kind or character to be filled from the same district, parish, municipality or ward, each candidate from the district, parish, municipality or ward, including candidates for membership on political party committees, shall be required to qualify for and be a candidate for a division within the district, parish, municipality or ward. Within each such district, parish, municipality or ward there shall be as many divisions as there are positions to be filled. The committee before whom the candidate is required to qualify or the secretary of state, if the candidate is required to qualify before the secretary of state, shall assign a letter designation for each such division."

QUESTIONS PRESENTED

1. Whether the District Court of Three Judges erred in holding that the Jurisdiction was conferred upon it pursuant to 28 U.S.S. §1343.

2. Whether the District Court of Three Judges erred in holding, as it did, that the plaintiffs were not estopped from contesting the validity of the March 24, 1974 municipal election.

3. Whether the District Court of Three Judges erred in

holding, as it did, that the plaintiffs herein have established a cause and/or a right of action pursuant to the Voting Rights Act of 1964, 42 U.S.C. §1973(c).

STATEMENT OF THE CASE

Plaintiffs in this lawsuit are four registered voters of the Town of Sorrento, three of whom were unsuccessful candidates for positions on the Town Council of the Town of Sorrento in the municipal election held on March 24, 1973.

In this lawsuit, plaintiffs have sought to overturn and have declared invalid the election of March 24, 1973, contending that the election, as conducted on that date, was technically in violation of the Voting Rights Act of 1965, because at the time of the election, the Louisiana statutory plan, pursuant to which the election was conducted, had not been approved by the Attorney General of the United States pursuant to 42 U.S.C. §1973(c). The election was held under the procedures outlined by LSA-R.S. 18:309 E (Act 106 of 1972), which required that elections of the type at issue here, be held by division. On April 20, 1973, the Assistant Attorney General for Civil Rights interposed an objection to Act 106, pursuant to 42 U.S.C. §1973(c).

In their opinion dated April 18, 1975 the Three-Judge Court found that on March 24, 1973 the Town of Sorrento had a voting population of 578. None of the plaintiffs are black. Three of the plaintiffs participated unsuccessfully in the election of March 24, 1973.

In its opinion, dated April 18, 1975, the Three-Judge Court held that despite the fact that the plaintiffs were white

and that three of them had unsuccessfully participated in the election, the election held by the Town of Sorrento on March 24, 1973 was nevertheless in violation of Section 5 of the Voting Rights Act, 42 U.S.C. §1973(c).

The Court entered an order declaring the election of March 24, 1973 unlawful and enjoining the defendants, their agents, employees and successors in office, and all persons acting in concert or participation with any of them, from "implementing any voting practice or procedure different in effect in Sorrento on November 1, 1964, unless the provisions of Section 5 of the Voting Rights Act, 42 U.S.C. §1973(c) had been first complied with"; and "failing or refusing to conduct a new election for the Town Council seats within a reasonable period, not to exceed four months, pursuant to voting practices and procedures in effect on November 1, 1964, or such new practices and procedures as have been approved under Section 5 of the Voting Rights Act, 42 U.S.C. §1973(c)."

THE QUESTIONS ARE SUBSTANTIAL

By the terms of the order of the Three-Judge Court, dated April 18, 1975, the Town of Sorrento is compelled to void the election of March 24, 1973 and incur the expense of holding another election. By virtue of the Court's order this additional expense will be incurred despite the fact that the election of March 24, 1973, and the procedures under which it was conducted, cannot in any manner be said to have been based upon a denial or abridgement of the right to vote on account of race or color.

The four plaintiffs are white not black citizens of the Town of Sorrento.

The Voting Rights Act of 1965, 42 U.S.C., Section 1973, is characterized by the Congress as a statute concerning "denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites," and states as follows:

> "No voting qualification or prerequisite to voting, or standard, practice or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote **on account of race or color.**" (Emphasis supplied)

The United States Supreme Court held in *South Carolina v. Katzenbach*, 383 U.S. 301, 86 Supreme Court 803 (1966), that the Voting Rights Act of 1964 was not violative of the U. S. Constitution. The history and purposes and intent of this Act were all discussed in great detail. On this subject, the Court stated, in its opinion in *Allen v. State Board of Elections*, 393 U. S. 544, 89 Supreme Court 817 (1969), as follows:

> "We gave detailed treatment to the history and purposes of the Voting Rights Act in South Carolina v. Katzenbach, *supra*. Briefly, the Act implemented Congress' firm intention to rid the country of racial discrimination in voting. It provided stringent new remedies against those practices which have most frequently denied citizens the right to vote on the basis of their race. Thus, in States covered by the Act, literacy tests and similar voting qualifications were suspended for a period of five years from the last occurrence of substantial voting discrimination. However, Congress apparently feared that the mere suspension of existing tests would not completely solve the problem, given the history some States had of simply enacting new and slightly different requirements with

> the same discriminatory effect." 393 U.S. at page 548; 89 Supreme Court at pages 822-823.

Thus, the Act is an expression of "Congress' firm intention to rid the Country of racial discrimination in voting."

The plaintiffs in this case are, as previously mentioned, **white** citizens and candidates for election to the Town Council of the Town of Sorrento. All of their opponents in this election contest were also white. The Town of Sorrento had 578 registered voters. Of this number 108 voters were members of the black race.

How can these plaintiffs **possibly** demonstrate to this Court that their right to vote has been abridged or impaired "on account of race or color." How can these plaintiffs **possibly** demonstrate denial or impairment or abridgement of the right to vote "on account of race or color" on the part of the class of persons whom they seek to represent (all qualified voters **who are** similarly inclined and situated).

These plaintiffs qualified to campaign for designated posts on the Town Council and each considered and then selected the position or post for which he wanted to campaign. Certainly this decision involved considerations such as the background, experience, qualifications, and popularity or public exposure that those who had previously qualified would offer as opponents. After having made these carefully considered, intelligent decisions, these plaintiffs campaigned and, at polling time, received far, far from a sufficient number of votes in order to be elected. In short, they were overwhelmingly defeated.

Appellants urge, in the alternative, that even if it be

assumed that these plaintiffs had sufficient standing to maintain this cause of action and that, further, that they each do have a cause of action, said plaintiffs, by virtue of their knowing and voluntary participation in the contested election are estopped from maintaining this litigation. It is believed that there cannot be any question about the fact that plaintiffs were advised that the election for posts on the Town Council would be held by division, instead of being conducted at large; that each of them qualified for certain of the numbered posts, after carefully considering the nature and quality and extent of the opposition already qualified for each post; they actively campaigned for their respective posts; and they were overwhelmingly defeated. Under these circumstances, the equitable doctrine of "estoppel in pais" should be invoked to bar these claims of plaintiffs and thus alleviate the financial hardships and disruption to government affairs and public business that would result in the Town of Sorrento if the order of April 17, 1975 is allowed to stand.

An excellent discussion of the doctrine of equitable estoppel or "estoppel in pais" is found in the case of *United States v. Georgia-Pacific Company*, 421 Federal 2nd 92 (9th Cir. 1970). There the Court dealt with an action by the Federal Government to secure declaratory relief and specific performance of a thirty (30) year old agreement whereby the owner of timberlands was committed to donate part of forest lands to the government if the boundaries of national forests were extended to include the lands. Because of certain acts and conduct on the part of the government, during the existence of the agreement, the defendant land owner raised, among other defenses, the doctrine of equitable estoppel. The Court discussed this doctrine as follows:

"[1] Equitable estoppel is a doctrine adjusting the relative rights of parties based upon consideration of justice and good conscience. Smale & Robinson, Inc. v. United States, 123 F.Supp. 457, 463 (S.D.Cal.1954); Peoples National Bank v. Manos Brothers, Inc., 226 S.C. 257, 84 S.E.2d 857, 870, 45 A.L.R.2d 1070 (1954); 3 Pomeroy, Equity Jurisprudence §§ 801, 802 (5th ed. Symons 1941); 28 Am.Jur.2d Estoppel and Waiver § 28, at 629. Pomeroy has defined equitable estoppel as having the effect of absolutely precluding a party, both at law and equity

> " '[f]rom asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy.'

"3 Pomeroy § 804, at 189. See also Dickerson v. Colgrove, 100 U. S. 578, 580, 25 L.Ed. 618 (1879); Bankers Trust Co. v. Pacific Employers Insurance Co., 282 F.2d 106, 112 (9th Cir. 1960). Equitable estoppel prevents a party from assuming inconsistent positions to the detriment of another party, Lebold v. Inland Steel Co., 125 F.2d 369, 375 (7th Cir. 1941) or, as stated in Bigelow, Law of Estoppel 603 (6th ed. Carter 1913), 'He who keeps silent when duty commands him to speak shall not speak when duty commands him to keep silent.' See also 31 C.J.S. Estoppel § 108, at p. 548.

"[2] Equitable estoppel is a rule of justice which, in its proper field, prevails over all other rules. City of Chetopa v. Board of County Com'rs., 156 Kan. 290, 133 P.2d 174, 177 (1943). An equitable estoppel will be found only where all the elements necessary for its invocation are shown to the Court. The test in this circuit was reiterated

in Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104, 84 A.L.R.2d 454 (9th Cir. 1960):

> " 'Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury. California State Board of Equalization v. Coast Radio Products, 9 Cir., 228 F.2d 520, 525.'

"[3-5]) Many kinds of activities—or inactivity—on the part of a defendant may permit the defense of equitable estoppel to be asserted against him. Obviously conduct amounting to fraud would suffice to raise an estoppel against a defendant, but it is clear that conduct far short of actual fraud willl also suffice. A party's silence, for example, will work an estoppel if, under the circumstances, he has a duty to speak. A common example of this occurs when a plaintiff knowingly permits a defendant to make expenditures or improvements on property the latter believes to be his, but which in fact the plaintiff knows to be the plaintiff's property. In this case, equity may decree that the plaintiff is estopped from asserting title to the property in question. As the court in Management & Investment Co. v. Zmunt, 59 F.2d 663, 664 (6th Cir. 1932), said:

> " 'It is axiomatic that equity will not grant relief to one who has stood by and permitted the expenditure of large sums of money upon the faith and belief that he does not deem his rights to be violated.' 421 F.2d at pages 95-97."

See also the case of *Bankers Trust Company v. Pacific Employers Insurance Co.*, 282 F.2d 106 (9th Cir. 1960).

A result very much akin to that reached with application of the doctrine of equitable estoppel is found in *Thompson v. Brown*, 434 F.2d 1092 (5th Cir. 1970). That case involved a Mississippi election contest which was filed in Mississippi State Court, wherein certain registered voters sought to attack the validity of a primary election which resulted in victories for certain black candidates. The defendants sought to remove this State Court election contest suit to Federal Court, on the assertion that it involved federally protected rights granted under the Voting Rights Act of 1965. Subsequent to the filing of the lawsuit and during the course of the litigation in the Federal District Court, the **general** election was held and the successful candidates in the primary election were also successful against their opponents in the general election. After determining that no case decisions or statutes dictated a contrary result, the Fifth Circuit held that any question touching on the qualifications of the successful candidates to run in the election had been **mooted** for the failure of those contesting the election to challenge the results of the general election.

It would certainly seem that the logic of this decision should be determinative of the attempts of these plaintiffs to throw out the results of this election and to insist that a new election be held.

In this case these plaintiffs are **not** asserting a denial or an abridgement or an impairment of their right to vote; they are **not** alleging that their voting rights, voting strength, voting power, etc., are denied or abridged or impaired because

of race or color. They simply have not stated, and indeed cannot state, proper standing and/or lawful cause of action under the Voting Rights Act of 1965. They simply cannot claim that their rights were adversely affected because of race or color.

What the plaintiffs **are** alleging here is that they knowingly, willfully and intelligently qualified for the purpose of campaigning for posts on the Town Council in Sorrento, Louisiana; that they selected, after considering the relative strengths and weaknesses of the previously qualified opposition, a post for which to campaign; that they did actively undertake to campaign for the selected posts; that they lost their respective races, that they lost rather convincingly; and that because there was a technical flaw in the process (a flaw which was not intended to pertain to them at all) they should be permitted to compel the Town of Sorrento to void the election and to incur the expense of holding another election, **despite the fact that they cannot show that the election results would have been different in any way.**

CONCLUSION

Appellants submit that the order of the Three-Judge Court dated April 18, 1975 declaring the election of March 24, 1973 unlawful and requiring that a new election be held is clearly erroneous. If the decision of the Three-Judge Court is allowed to stand, the Town of Sorrento will be required to incur the expense of holding an additional election despite the fact that there has been, and can be, no showing that the election of March 24, 1973 was affected by any racial dis-

crimination or that there was a denial or abridgement or an impairment of any voters right to vote.

Respectfully submitted:

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Attorneys for Appellants

CERTIFICATE OF SERVICE

We hereby certify that we have this day, the 15th day of July, 1975 mailed three copies of this Brief to the Attorneys for all parties to the proceedings; namely, Ralph Tureau, Esq., 208 East Cornerview Street, Gonzales, Louisiana 70737 and to Vincent J. Sotile, Esq., P. O. Drawer 669, Donaldsonville, Louisiana 70346.

By: Roger M. Fritchie
ROGER M. FRITCHIE

APPENDICES

APPENDIX A

United States District Court
Middle District of Louisiana
CIVIL ACTION NUMBER 73-120

GLYNN REINE, EMILE AIME, GARY BABIN, AND MIKE LeBLANC

versus

TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, EMILE LAMBERT, CHAIRMAN— TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, R. E. CHAMPAGNE, MEMBER— TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, MORRIS GAUTREAU, MEMBER— TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, AND NEWLY ELECTED COUNCILMAN, ROLAND MELANCON, NEWLY ELECTED MEMBER OF TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, WADE O. MARTIN, SECRETARY OF STATE, STATE OF LOUISIANA THE TOWN COUNCIL OF THE TOWN OF SORRENTO, PERCY BOUDREAUX, A. J. KLING, J. B. MELANCON AND ROY MELANCON

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Before WISDOM, Circuit Judge and WEST AND RUBIN, District Judges.

PER CURIAM:

This matter comes before the Court on cross-motions for summary judgment. After hearing the arguments of counsel, studying their briefs, and reviewing the evidence in the record, the Court makes the following findings of fact:

1. Sorrento is a small town in Ascension Parish, which at the time of the events in dispute here had a voting population of 578. 470 of these voters were white; 108 were black.

2. The defendants, members of the town Municipal Democratic Executive Committee and the Committee itself, are the officials vested by law with the power to decide how elections for the Sorrento Town Council are to be conducted. The other defendants named are members of the Town Council who were elected March 24, 1973, the election which this suit contests.

3. The plaintiffs are unsuccessful candidates for these offices and voters in the town; all are white.

4. Since well before November 1, 1964, candidates for the Sorrento Town Council have run on an at-large basis. In 1972, however, the Louisiana legislature enacted a statute requiring that elections of this kind be held by division. Act 106 of 1972, LSA-RS 18:309E.

5. On February 19, 1973, the Attorney General of Louisiana submitted Act 106 to the Attorney General of the United States, for his review pursuant to 42 U.S.C. §1973c.

6. On February 18, 1975 the Attorney General of Louisiana issued a formal opinion, stating that the procedures authorized by Act 106 should not be used in the 63 municipal elections scheduled for March 24, 1973. He later suggested, by a February 19, 1973 telegram to each municipal executive committee, that candidate filings should be reopened to enable candidates to qualify for at-large elections.

7. On or near to February 22, 1973, two of the plaintiffs submitted a second set of qualifying papers, to be used in the event that the election was to be held for seats at-large and re-qualification was thus necessary. A third plaintiff may have done so.

8. On February 22, 1973, in response to an inquiry from the Louisiana Secretary of State, the Louisiana Attorney General stated that his opinion with respect to Act 106 was advisory only. On February 26, 1973, the chairman of the Sorrento Municipal Democratic Executive Committee wrote the Louisiana Secretary of State to advise him that Sorrento would not reopen qualifications for municipal offices.

9. The election for town councilmen was held in Sorrento on March 24, 1973, for seats by division under Act 106. The other 62 Louisiana municipalities holding elections that day used the procedures in effect before Act 106 was adopted.

10. Those plaintiffs who were candidates lost by a substantial margin.

11. On behalf of the Attorney General of the United States, the Assistant Attorney General for Civil Rights interposed an objection to Act 106, pursuant to 42 U.S.C. §1973c, on April 20, 1973.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1343. *Allen v. State Board of Elections*, 1969, 89 S.Ct. 817.

2. The elections held by the Town of Sorrento on March 24, 1973, followed a new procedure for electing town councilmen before the procedure had received a favorable determination by the Attorney General of the United States or the District Court for the District of Columbia. These elections consequently were held in violation of §5 of the Voting Rights Act, 42 U.S.C. §1973c. *Allen v. State Board of Elections*, 1969, 89 S.Ct. 817; *United States v. Garner*, N.D. Ga. 1972, 349 F.Supp. 1054.

3. The plaintiffs, unsuccessful candidates and voters, are not estopped to contest the validity of this election by their participation in it. The confusion surrounding just how the election would be held, the possible damage to their candidacy that a pre-election challenge might have caused, and the importance of the rights the plaintiffs seek to vindicate suggest that this is not an appropriate case in which to apply any doctrine of estoppel. See *Toney v. White*, 5 Cir. 1973, 488 F.2d 310.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the March 24, 1973 municipal election for town councilmen in Sorrento was unlawful;

2. That the invalidity of the March, 1973 election shall not affect the validity of actions taken or to be taken in their official capacities by those town councilmen elected at that time;

3. That the defendants, their agents, employees and successors in office, and all persons acting in concert or participation with any of them, are permanently enjoined from:

(a) Implementing any voting practice or procedure different from those in effect in Sorrento on November 1, 1964, unless the provisions of §5 of the Voting Rights Act, 42 U.S.C. §1973c, have been first complied with; and

(b) Failing or refusing to conduct a new election for the town council seats within a reasonable period, not to exceed four months, pursuant to voting practices and procedures in effect on November 1, 1964, or such new practices and procedures as have been approved under §5 of the Voting Rights Act, 42 U.S.C. §1973c. For good cause shown, and on proper motion, this period may be extended for a further reasonable time.

4. That the Court will retain jurisdiction over this case until after the next elections to be held pursuant hereto, but in all other respects, this case can be, and it is now administratively CLOSED.

April 18, 1975.

s/ John Minor Wisdom
United States Circuit Judge

s/ E. Gordon West
United States District Judge

s/ Alvin B. Rubin
United States District Judge

APPENDIX B

THE UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES

MIDDLE DISTRICT OF LOUISIANA
CIVIL ACTION NO. 73-120

GLYNN REINE, EMILE AIME, GARY BABIN AND MIKE LeBLANC,

Plaintiffs

versus

TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, ET ALS,

Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I.

PLEASE TAKE NOTICE that the defendants herein, PERCY BOUDREAUX, A. J. KLING, J. B. MELANCON, ROY MELANCON, EMILE LAMBERT, R. E. CHAMPAGNE, MORRIS GEAUTREAU, ROLAND MELANCON and THE TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, hereby appeal to the Supreme Court of the United States from the final decision of the District Court of Three Judges which declared invalid the March 24, 1973 municipal election for Town Councilmen in the Town of Sorrento, Louisiana; and, which further permanently enjoined the defendants from implementing any voting practice or procedure different from those in effect in the Town of Sorrento, Louisiana, on November 1, 1964 unless the provisions of Section 5 of the Voting Rights Act, 42 USC § 1973c, have been first complied with; and from failing or refusing to conduct a new election for Town Council seats within a reasonable period, not to exceed four months, pursuant to voting practices and procedures in effect on November 1, 1964, or such new practices and procedures as have been approved under Section 5 of the Voting Rights Act, 42 USC § 1973c, which said Judgment was entered in this action on April 18, 1975.

II.

This appeal is taken pursuant to 28 USC § 1253.

III.

The Clerk of Court will please prepare a transcript of the Record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) All pleadings, including plaintiffs' original complaint and defendants' responsive pleadings and all motions, including those for summary judgment;
(b) The original transcripts of all deposition testimony taken in connection with this matter; and
(c) Written opinion and decree of the District Court of Three Judges.

IV.

The following questions are presented by this Appeal:

(a) Whether the District Court of Three Judges erred in holding that the Jurisdiction was conferred upon it pursuant to 28 USC §1343;
(b) Whether the District Court of Three Judges erred in holding, as it did, that the plaintiffs were not estopped from contesting the validity of the March 24, 1973 municipal election;
(c) Whether the District Court of Three Judges erred in holding, as it did, that the plaintiffs herein have established a cause and/or a right of action pursuant to the Voting Rights Act of 1964, 42 USC § 1973c; and

(d) Such other questions as are inherent in the facts of the matter and the nature of the case.

By Attorneys:

DURRETT, HARDIN, HUNTER,
DAMERON & FRITCHIE

By: _____

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PROOF OF SERVICE

I, ROGER M. FRITCHIE, one of the attorneys for the defendants, PERCY BOUDREAUX, A. J. KLING, J. B. MELANCON, ROY MELANCON, EMILE LAMBERT, R. E. CHAMPAGNE, MORRIS GEAUTREAU, ROLAND MELANCON and THE TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 16th day of May, 1975, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties hereto, as follows:

I.

On Glynn Reine, Emile Aime, Gary Babin and Mike LeBlanc, plaintiffs, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their attorney of record, as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-93

Glynn Reine, Emile Aime, Gary Babin and Mike LeBlanc,

Appellees,

versus

Town of Sorrento Municipal Democratic Executive Committee, Emile Lambert, Chairman, Town of Sorrento Municipal Democratic Executive Committee, R. E. Champagne, Member, Town of Sorrento Municipal Democratic Executive Committee, Morris Gautreau, Member, Town of Sorrento Municipal Democratic Executive Committee, and Newly Elected Councilman, Roland Melancon, Newly Elected Member of Town of Sorrento Municipal Democratic Executive Committee, Wade O. Martin, Secretary of State, State of Louisiana, The Town Council of the Town of Sorrento, Percy Boudreaux, A. J. Kling, J. B. Melancon and Roy Melancon,

Appellants.

On Appeal from the United States District Court for the Middle District of Louisiana (Three-Judge Court)

MOTION TO AFFIRM

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On Appeal from the United States District Court for the Middle District of Louisiana (Three-Judge Court)

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 (1)(d) of the Rules of

the Supreme Court of the United States of America, move that the final Judgement and Order of the District Court be affirmed on the ground that the decision of the District Court is so obviously correct as to warrant no further review by this Court.

OPINIONS BELOW

The opinion of the District Court is not reported, but is set forth in Appendix A of Appellant's jurisdictional statement.

JURISDICTION

The jurisdictional requisites are adequately set forth in Appellants' jurisdictional statement.

QUESTIONS PRESENTED

The statement of the Appellants set forth three (3) questions to be considered by this Court. They are as follows:

"1. Whether the District Court of Three Judges erred in holding that the Jurisdiction was conferred upon it pursuant to 28 U.S.S.C. 1343.

"2. Whether the District Court of Three Judges erred in holding, as it did, that the plaintiffs were not estopped from contesting the validity of the March 24, 1974, municipal election.

"3. Whether the District Court of Three Judges erred in holding, as it did, that the plaintiffs herein have established a cause and/or a right of action pursuant to the Voting Rights Act of 1964, 42 U.S.C. 1973(c)."

STATUTE INVOLVED

The action was brought pursuant to Section 5 of the 1965 Voting Rights Act, 42 U.S.C. 1973(c).

Under Section 5, of that Act, whenever a state or political subdivision seeks "to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting, different from that enforced or in effect, on November 1, 1964," such state or political subdivision must, either obtain a declaratory judgement from the United States District Court for the District of Columbia, that such "qualification, prerequisite, standard, practice or procedure, does not have the purpose, and will not have the effect of denying or abridging the right to vote on account of race or color," or submit said voting qualification, standard, practice, or procedure to the Attorney General and receive no objection from the Attorney General within sixty (60) days after such submission. (Aug. 6, 1965, PL 89-110, Sec. 5, 79 Stat. 439) 42 U.S.C. 1973 (c). In the case at hand, Act 106 of the 1972 Louisiana Legislature was submitted by Louisiana's Attorney General to the United States Department of Justice on February 19, 1973. Approximately thirty-three (33) days later, on March 24, 1973, the Town of Sorrento held elections for Town Councilmen or Aldermen, according to the new standard practice or procedure, with respect to voting, different from that in force or effect on November 1, 1964, as provided for by Act 106 of the 1972 Louisiana Legislature. On April 20, 1973, approximately sixty (60) days after its submission, the United States Assistant Attorney General in the Civil Rights Division, interjected an opposition to Act 106 of the 1972 Louisiana Legislature. Therefore, Act 106 has never been given legal effect.

STATEMENT OF THE CASE

Traditionally, and on November 1, 1964, the procedure followed by the Town of Sorrento in the conduction of its election for Town Aldermen or Councilmen was to have all candidates run at large against each other. The Louisiana Legislature in 1972, however, passed Act 106, which provided that in any future elections in a municipality where there were two (2) or more offices of the same kind or character to be filed, the election shall be by divisions. Each candidate was required to qualify for a particular division and was to be assigned a letter designation for such division. The procedure provided for by Act 106 of the 1972 Legislature, enacted into law as L.S.A.-R.S. 18:309 E was different from that previously followed by the Town of Sorrento.

On June 25, 1972, Act 106 was approved by Louisiana's Governor and, accordingly, it went into effect on January 1, 1973. Subsequently, suit was filed in the United States District Court, Western District of Louisiana, Lake Charles Division, seeking to enjoin the election for city councilmen in the City of Lake Charles, scheduled for March 24, 1973, pursuant to the provisions of Act 106, of the 1972 Louisiana Legislature. Judge Edwin F. Hunter, Jr., Judge of the United States District Court for the Western District of Louisiana, declared that the State Statute was illegal and inapplicable to the election of the members of the Lake Charles City Council on March 24, 1973, for the reason that it did not comply with the provisions of 42 U.S.C.A. Sections 1973 (c). Judge Hunter ordered that the March 24, 1973, election be held on an at large basis, in accordance with the procedure in effect on November 1, 1964, and not by divisions as provided for by Act 106 of the 1972 Session of the Louisiana Legislature,

Wilfred Lada v. The City Council of the City of Lake Charles, Louisiana, (Civil Action Number 18275, W.D., La. Lake Charles Division).

On February 15, 1973, Louisiana's Attorney General mailed a copy of Act 106 of the 1972 Louisiana Legislature to the United States Department of Justice for approval. On February 19, 1973, the United States Department of Justice received the copy mailed and the submission was completed.

A copy of the *Lada* decision was received by Honorable Wade O. Martin, Jr., Secretary of State for the State of Louisiana. Since the Secretary of State was responsible for the printing of ballots for the 63 municipalities scheduled to hold elections on March 24, 1973, on February 16, 1973, Mr. Martin wrote a letter to the Louisiana Attorney General seeking his opinion on the subject matter.

On February 18, 1973, Attorney General Guste responded to Secretary of State Martin's request with a three and one-half page opinion, marked for immediate release. In that opinion of the Louisiana Attorney General, Act 106 of the 1972 Louisiana Legislature was quoted, as well as, 42 U.S.C.A. 1973(c). The Louisiana Attorney General stated that it was the opinion of his office that Act 106 should not be applied with respect to elections in the 63 municipalities scheduled for March 24, 1973. Attorney General Guste stated that it was his opinion that Judge Hunter's order in the *Lada* case should be applied uniformly to the 63 municipalities. The opinion further stated:

> "If, for example, we proceed with the 63 other elections under Act 106, we would run the risk of having these contests voided by subsequent Court action."

This opinion was made available to the Town of Sorrento Municipal Democratic Executive Committee. On February 19, 1973, a telegram was sent by Attorney General William Guste, to the Chairman of each municipal executive committee stating that filing should be re-opened in light of the Federal Court's opinion rendered on February 16, 1973, in holding Act 106 illegal and inapplicable.

On February 22, 1973, Secretary of State Martin wrote to Attorney General Guste, stating that the committee representatives from Mamou and Sorrento had informed him by telephone that they did not intend to follow the ruling that they should re-open qualifying candidates. On that same date, Attorney General Guste wrote back that his opinion of February 18, 1973 (as are all opinions of the Attorney General), was only advisory and, therefore, that if a municipality insisted upon holding elections for at large positions pursuant to Act 106, they should be permitted to do so. A copy of this letter was sent to Honorable Emile Lambert, Chairman of the Town of Sorrento Municipal Democratic Executive Committee.

On February 26, 1973, Emile R. Lambert, Chairman of the Town of Sorrento Municipal Democratic Executive Committee wrote to Secretary of State Martin as follows:

> "This will advise you that the Democratic Executive Committee for the Town of Sorrento has decided not to re-open qualifications for municipal offices as suggested by the Attorney General's opinion on this matter. . . ."

On March 24, 1973, election for Town Councilmen or Aldermen was held in approximately 63 municipalities in the State of Louisiana. **Only** in the Town of Sorrento was the

election held under the provisions of Act 106 of the 1972 Legislature. In **all** other municipalities, the procedure followed was that suggested by the Louisiana Attorney General and that which was in effect on November 1, 1964, in accordance with the 1965 Voting Rights Act.

Candidates for Councilmen in the Town of Sorrento were called upon to qualify and file initially on a division basis, as provided for by Act 106. Subsequently, they were called and told to refile on an at large basis as was the procedure followed in all prior elections. Plaintiff candidates thereupon assumed that they would be running on a strictly at large basis. It was only shortly before the actual election that Petitioner-Candidates learned that they would not be running on an at large basis, as they had requalified, but rather on a division basis which was the procedure for which they had qualified initially. (Depositions of Glynn Joseph Reine, Page 23-24, Page 41-46; Emile Joseph Aime, Page 14-17; Gary J. Babin, Page 8-10, Page 40-43.)

On April 3, 1973, Glynn Reine, Emile Aime and Gary Babin, who were unsuccessful candidates In the Town of Sorrento, March 24, 1973, Election and Mike LeBlanc, a citizen and tax payer of the Town of Sorrento, filed this Petition in the United States District Court in and for the Middle District of Louisiana, Baton Rouge Division.

Subsequently, a Motion to Drop Third Party Defendant was filed by the Secretary of State for the State of Louisiana, which Motion was granted.

On July 27, 1973, a Three-Judge Federal panel was appointed by John R. Brown, Chief Judge of the Fifth Circuit

Court of Appeals. A hearing by that Three-Judge Federal panel was held on November 27, 1973, at the United States Courthouse in New Orleans, Louisiana. Decision was rendered on April 18, 1975, by the Three-Judge Federal panel, which opinion is reproduced as Appendix A to Appellants' Jurisdictional Statement.

REASONS FOR GRANTING THE MOTION TO AFFIRM

1. AS TO THE APPELLANTS' CONTENTION THAT THE DISTRICT COURT OF THREE JUDGES ERRED IN HOLDING THAT THE JURISDICTION WAS CONFERRED UPON IT PURSUANT TO 28 U.S.C. 1343.

This suit was instituted by private citizens pursuant to Title 28, United States Code, Section 1343(3). That statute provides as follows:

> "The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . . . (3) to address the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress, providing for equal rights of citizens, or of all persons within the jurisdiction of the United States" 28 U.S.C. 1343(3).

Congress, in enacting Section 5 of the 1965 Voting Rights Act, authorized plaintiffs herein to secure the relief which they seek. Therefore, the District Court has original jurisdiction in this matter. *Allen v. State Board of Elections*, 393 U. S. 544, 554-557 (1969).

Plaintiffs' complaint was heard by a District Court of

three (3) judges, pursuant to the provisions of 28 U. S. C. 2284. Plaintiffs were commanded to do so by the language of Section 5 of the 1965 Voting Rights Act, "Any action under this Section shall be heard and determined by a Court of Three (3) Judges in accordance with the provisions of Section 2284 of Title 28 of the United States Code and any appeal shall lie to the Supreme Court." (August 6, 1965, PL 89-110, Sec. 5, 79 Stat. 439), 42 U.S.C. 1973(c).

Furthermore, it has been held by this Court that a Federal Statute implies a private right of action in the Court of appropriate jurisdiction when the statute is passed to protect a class of citizens, although the statute does not specifically authorize members of the protected class to institute suit. *Allen v. State Board of Elections*, 393 U. S. 544, 557 (1969). In the case at hand, Section 5 of the 1965 Voting Rights Act provides: "**No person** shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure." Section 5 would be a meaningless provision unless private citizens and, specifically, the plaintiffs in the case at hand, are permitted judicial enforcement of the 1965 Voting Rights Act. *Allen v. State Board of Elections*, 393 U.S. 544, 557 (1969).

The Appellees (Plaintiffs) prayer for a declaratory Judgement by the District Court of three (3) Judges was brought pursuant to 28 U.S.C. 2201-2202. This Court has held that declaratory judgements as authorized by 28 U.S.C. 2201-2202, may be rendered by the District Court of three (3) judges in cases which are brought under 28 U.S.C. 1343. *Allen v. State Board of Elections*, 393 U.S. 544, 558-560 (1969).

42 U.S.C. 1973(c) authorized a District Court of three

(3) judges in suits brought by private litigants to enforce the provisions of the 1965 Voting Rights Act, *Allen v. State Board of Elections*, 393 U.S. 544, 561, 563 (1969).

Appellants' contention that the District Court of three (3) Judges erred in holding that the jurisdiction was conferred upon the Court cannot be seriously considered in light of the applicable code articles cited above and previous holdings by this Court.

The Appellants' claim on this point merits no further argument and must be considered a delay in tactics.

2. AS TO THE APPELLANTS' CONTENTION THAT THE DISTRICT COURT ERRED IN HOLDING THAT THE PLAINTIFFS WERE NOT ESTOPPED FROM CONTESTING THE VALIDITY OF THE MARCH 24, 1974, MUNICIPAL ELECTION.

The District Court's ruling on this issue is contained in the last paragraph of its opinion (Appendix A, Jurisdictional Statement, Page 17):

> "The Plaintiffs, unsuccessful candidates and voters, are not estopped to contest the validity of this election by participation in it. The confusion surrounding just how the election would be held, the possible damage to their candidacy that a pre-election challenge might have caused, and the importance of the rights the plaintiffs seek to vindicate suggest that this is not an appropriate case in which to apply any doctrine of estoppel. See *Toney v. White*, 5 Cir. 1973, 488 F.2d 310."

Appellants' contention is that the plaintiffs are estopped from maintaining this litigation by virtue of their knowing and voluntary participation in the contested election. The Appellants seek to have this Court invoke the equitable doctrine of "Estoppel in pais."

In support of that argument the case of *United States v. Georgia Pacific Company*, 241 Fed. 2nd 92 (9th Cir.-1970) is cited. That case concerns the enforcement of a thirty (30) year old agreement whereby an owner of timberlands was committed to donate part of the forest land to the government if the boundaries of the natural forest were extended to include the land. Over the years, the government made no claim, whatsoever, of the lumber company to convey any land under the 1934 document until 1961. In the meantime, Georgia Pacific had managed the timberland at a great deal of expense, adding considerable value to the land. The Court applied the equitable estoppel doctrine to that case. That case, however, was decided on contract and did not concern federal law as the case at hand and is clearly inapplicable here.

The Appellants' purpose in citing the case is obviously to display a discussion on the doctrine of equitable estoppel or "estoppel in pais." The authority cited by the Appellants cannot for that reason be seriously considered by this Court.

The other case cited by defendants is the case of *Thompson v. Brown*, 434 F.2nd 1092 (5th Cir., 1970). The issue in that case was removability under the Civil Rights Removal Statutes 28 U.S.C.A. 1443. The rights sought to be enforced were not federally created rights, but rights with remedies

under a State Statutory scheme. The Court indicated that the case was not a voting rights case in any respect.

Complaintants in that suit sought to have the case removed on grounds that the State Court will not observe the law. Unsuccessful candidates had contested the primary election in State Court. Later, there was a General Election and no contest was filed. The successful candidates sought to have the case removed to Federal Court. The Court ruled that any question touching on the successful candidate's qualifications to run in the primary election had been mooted for failure of the unsuccessful candidates to challenge the general election results.

The same issues are not present in the case at hand. Furthermore, there has never been a general election in Sorrento for Aldermen, so that in effect, the primary constitutes the election for Aldermen.

In the case of *Moore v. LaFleur County Board of Election Commissioners*, 351 F. Supp. 848, it was contended that since the United States Attorney General was aware of the at large election and had, in fact, sent federal observers to observe the election first hand and since he interposed no objection, that he acquiesced in the election and, therefore, was estopped from later objecting to the election procedure. This is the same principle or issue raised by Appellants in the case at hand. The Court rejected the argument as "untenable."

To argue that one is estopped from enforcing Federal Law against its violators if one does not take immediate action upon seeing that violation, irregardless of his education

and comprehension, is to relegate Federal Law to the position of farcicalness. The enforcement of Federal Law would then depend upon whim or fancy, whereby one is free to pick and choose whether or not the Federal law should be given force and effect in any particular situation. Rather, Congress enacts laws to be given full force and effect and expects remedies where there is a violation.

The Appellants' claim on this point merits no further argument.

3. AS TO THE APPELLANTS' CONTENTION THAT THE DISTRICT COURT ERRED IN HOLDING THAT THE PLAINTIFFS HEREIN HAD ESTABLISHED A CAUSE AND/OR A RIGHT OF ACTION PURSUANT TO THE VOTING RIGHTS ACT OF 1965, 42 U.S.C. 1973(c).

The Appellant offers as justification for his contention the fact that the plaintiffs are white.

The Appellant cites dica from *Allen v. State Board of Elections*, 393 U.S. 544, to support his contention that because the Voting Rights Act is an expression of Congress' firm intention to rid the country of racial discrimination in voting, the Appellees (plaintiffs) have no standing to sue because they are white. That decision actually supports this Motion to Affirm. In Allen, this Court stated that a Federal Statute implies a private right of action in the Court of appropriate jurisdiction when the statute is passed to protect a class of citizens, although the statute does not specifically authorize members of the protective class to institute suit.

In the case at hand, the Appellants are asking this Court to hold that only black citizens would have standing to maintain this cause of action. Appellants have not cited authority for such restrictive construction of Section 5 of the 1965 Voting Rights Act. Section 5 of the 1965 Voting Rights Act provides:

> "**No person** shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure."

The Appellees call this Court's attention to the words "**No person.**" The statute does not restrict its applicability to black persons as the Appellants would argue. To take such a narrow approach would leave Section 5, meaningless unless **all** private citizens, and, specifically, the Appellees, in the case at hand, are permitted to seek judicial enforcement of the 1965 Voting Rights Act. It is only through such an interpretation that the evils Congress intended to remedy by enactment of the act will be removed.

The suggestion by Appellants that the Appellees, as white citizens do not have a right of action under the Act must be rejected as untenable.

The District Court committed no error in the Judgement here appealed from declaring the election of March 24, 1973, for Town of Sorrento Councilmen unlawful and requiring that a new election be held.

CONCLUSION

For the foregoing reasons the Judgement of the District Court should be affirmed without further review of this Court.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this day, the 8 day of September, 1975, mailed a copy of this Brief to the Attorney for all parties to these proceedings, namely:

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No. 75-93

In the Supreme Court of the United States

OCTOBER TERM, 1975

TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, ET AL., APPELLANTS

v.

GLYNN REINE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-93

TOWN OF SORRENTO MUNICIPAL DEMOCRATIC EXECUTIVE COMMITTEE, ET AL., APPELLANTS

v.

GLYNN REINE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted pursuant to this Court's invitation of October 6, 1975.

QUESTIONS PRESENTED

1. Whether persons not alleging racial discrimination, who were required to resort to election procedures in Sorrento, Louisiana, which had not been precleared under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, had standing to enforce Section 5.

2. Whether the new election ordered by the district court was (a) barred by appellees' participation in the challenged election or (b) inappropriate under Section 5.

STATEMENT

Sorrento, Louisiana, is a small town with a voting population of 578 persons, 470 of whom are white and 108 of whom are black (J.S. App. 18). The town is governed by a five-member council; this case concerns the March 1973 election of that council.

From well before November 1, 1964, the five town councilmen had been elected on an at-large basis (*id.* at 19). On June 25, 1972 Louisiana's governor approved Act 106 (LSA–R.S. 18:309E (1976 Cum. Supp.)) which required that, after January 1, 1973, elections involving two or more seats of the same kind be held by division (J.S. 3; J.S. App. 19).[1] Because this enactment would alter the method of election, and because Louisiana is subject to the preclearance requirements of Section 5 of the Voting Rights Act, 79 Stat. 439, as amended, 42 U.S.C. 1973c (30 Fed. Reg. 9897), the Louisiana Attorney General on February 19, 1973, submitted Act 106 to the Attorney General of the United States for clearance under Section 5 (J.S. App. 19).[2]

On February 14, 1973, the legality of applying Act 106 to another Louisiana municipality was challenged on Section 5 grounds and, on February 16, 1973, the United States District Court for the Western District of Louisiana issued an opinion in *Lada* v. *The City Council of Lake Charles, Louisiana,* Civ.

[1] The statute is reprinted at J.S. 3. From the parties' description of the change contemplated by Act 106, it appears that each councilman was still to be elected on an at-large basis, but that, for the first time, each candidate was required to run for one of five specified posts (J.S. 7–8; Motion to Affirm 4).

[2] The letter of submission is dated February 15, 1973.

Action No. 18275, stating that, because the Section 5 review process with respect to Act 106 had not yet been completed, Act 106 "is hereby declared to be illegal and inapplicable to this election [in Lake Charles]" (App., *infra,* p. 6A).

Following the entry of that order, the Louisiana Secretary of State, who was responsible for the preparation of election ballots for the upcoming municipal elections, wrote to the State Attorney General for an opinion on the applicability of Act 106 in light of the *Lada* decision.[3] The State Attorney General responded two days later, issuing his opinion that Act 106 should not be applied to any of the upcoming municipal elections (J.S. App. 19; App., *infra,* pp. 3A–7A), and thereafter informed each municipal executive committee that Act 106 should not be applied to the elections to take place on March 24, 1973, and that election qualification procedures should be reopened to permit candidates to qualify for at-large elections (J.S. App. 19; App., *infra,* p. 9A).

On February 22, 1973, the Louisiana Attorney General, responding again to a letter from the Secretary of State, stated that all opinions of the state Attorney General are advisory only, and that if a municipality insists on holding elections pursuant to Act 106, it should be permitted to do so (J.S. App. 19; App., *infra,* pp. 11A–12A).

The Town of Sorrento Municipal Democratic Executive Committee thereafter notified the Louisiana

[3] A copy of this letter appears at pages 1A–2A of the Appendix to this brief.

Secretary of State that, as suggested by the Attorney General's opinion of February 22, the Town would not reopen qualifications for municipal offices, and requested that ballots should be printed in accordance with previous certifications for election by divisions (J.S. App. 19; App., *infra,* p. 13A). The Sorrento councilmanic election was held on March 24, 1973, under Act 106 (J.S. App. 19). Sorrento was the only one of the 63 municipalities holding elections that day which used the provisions of Act 106 (*ibid.*).

The complaint in this suit was filed on April 3, 1973. All plaintiffs (appellees here) are white voters in the Town of Sorrento, some of whom ran unsuccessfully for council seats in the 1973 election. Defendants (appellants here) are the Democratic Executive Committee and local officials responsible for the supervision of the March 24 election. Appellees' complaint alleged that the "division" plan, under which the election of March 24, 1973, was held, was a changed voting procedure which had not received federal pre-implementation review under Section 5 of the Voting Rights Act (Complaint, ¶11). Appellees requested the convening of a three-judge court, and sought a declaration that the election violated the Constitution and Section 5, and an injunction preventing further enforcement of the election results.

On April 20, 1973, shortly after the complaint in this case was filed, the Attorney General of the United States, by letter from the Assistant Attorney General for Civil Rights to the Louisiana Attorney General, objected to the implementation of Act 106 (J.S. App. 20; App., *infra,* pp. 15A–17A) and sent a copy of his

objection to the district court in this case. The letter states: "In our view the electoral system as modified by Act 106 significantly reduces the potential for minority candidates to win representation in multi-member offices in jurisdictions such as Louisiana where there has been a pattern of racial bloc voting" (App., *infra,* p. 15A).

A three-judge court was convened, and the case thereafter was submitted on cross-motions for summary judgment (J.S. App. 18). In an opinion (J.S. App. 17–21) issued on April 18, 1975, the district court held the election unlawful for failure of the municipality to secure federal review pursuant to Section 5 prior to implementing the changed voting procedure incorporated in Act 106 (*id.* at 20). The court further concluded that plaintiffs' participation in the election did not bar their challenging the election's validity (*ibid.*). It entered both declaratory and injunctive relief, ordering defendants to hold new elections within four months of the decree, either pursuant to the election plan in effect on November 1, 1964, or pursuant to a new plan submitted in compliance with Section 5 (J.S. App. 21).[4] An appeal to this court was noted by the defendants on May 16, 1975, and docketed on July 15, 1975.

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[4] Under this order, new elections should have been held no later than August 18, 1975. However, although no stay of this order was sought from the district court or this Court, we are advised by counsel for the parties that new elections have not been held. In the regular course, the next municipal elections for council seats in Sorrento would be held in March 1977. LSA–R.S. 33:383 (1976 Cum. Supp.).

ARGUMENT

The district court correctly held that appellees had standing to challenge the procedure used for municipal elections in the Town of Sorrento on March 24, 1973, and that they were not "estopped to contest the validity of this election by their participation in it" (J.S. App. 20).

1. Appellants do not challenge the district court's conclusion that the elections were held in violation of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.[5] Instead they characterize this violation as "a technical flaw in the process" (J.S. 5, 12), about which the appellees have no standing to complain because they are white. That contention misreads both the statute and this Court's decisions defining remedies thereunder.

[5] Section 5 provides that no person may be denied the right to vote pursuant to a voting procedure "different from that in force or effect on November 1, 1964," unless the United States District Court for the District of Columbia finds in a declaratory judgment action that the new procedure "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color," or, alternatively, upon submission of the proposal for review "the Attorney General has not interposed an objection within sixty days after such submission." 42 U.S.C. 1973c.

From well before November 1, 1964, councilmen in the town of Sorrento had been elected on an at-large basis. Thus, the "division" plan of election used in the 1973 election was a voting change subject to Section 5, and preclearance was necessary before implementation. That process had not been completed by March 24, 1973, and, accordingly, Act 106 had no legal effect on the date of the Sorrento election. See *Allen* v. *State Board of Elections*, 393 U.S. 544, 569–572; *Perkins* v. *Matthews*, 400 U.S. 379, 394–397; *Connor* v. *Waller*, 421 U.S. 656; *East Carroll Parish School Board* v. *Marshall*, No. 73–861, decided March 8, 1976, slip op. p. 3, n. 6.

The purpose of Section 5, of course, is to implement the Fifteenth Amendment's prohibition against racial discrimination in voting. *South Carolina* v. *Katzenbach,* 383 U.S. 301. But "[t]he Act was drafted to make the guarantees of the Fifteenth Amendment finally a reality for *all* citizens." *Allen* v. *State Board of Elections,* 393 U.S. 544, 556 (emphasis added). Although the Act does not explicitly authorize a private right of action to compel compliance by covered states and their subdivisions, it "does provide that '*no person* shall be denied the right to vote for failure to comply with [a new state enactment covered by, but not approved under, § 5].'" *Id.* at 555 (emphasis added). This language is not qualified, expressly or implicitly, by any racial limitation. It comprehensively covers persons of every race. Consequently, the private right of action created under Section 5 is not restricted to persons who are complaining that their political rights have been abridged on racial grounds. "The guarantee of § 5 that no person shall be denied the right to vote for failure to comply with an unapproved new enactment subject to § 5, might well prove an empty promise unless the private citizen were allowed to seek judicial enforcement of the prohibition." 393 U.S. at 557.

The remedy thus created is part of Congress' exercise under Section 2 of the Fifteenth Amendment of its "full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting." *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 326. In Section 5, Congress adopted "an unusual,

and in some aspects a severe, procedure" (*Allen* v. *State Board of Elections, supra,* 393 U.S. at 556), which provides for the suspension, *ab initio,* of any change in election procedures unless and until the new procedure is declared by the District Court for the District of Columbia to have no racially discriminatory purpose or effect, or the Attorney General fails, within 60 days after submission, to object to the procedure on those grounds (see n. 5, *supra*). To give effect to this preclearance requirement, Congress expressly provided for suits by the Attorney General (Section 12(d) and (e), 79 Stat. 443, as amended, 42 U.S.C. 1973j(d) and (e)), and implicitly provided—by Section 5's provision that "no person" could be required to resort to the suspended procedures—for private actions to enforce Section 5's requirements. *Allen* v. *State Board of Elections, supra.* The class of persons who benefit from Section 5, therefore, is not only those who suffer political discrimination on racial grounds, but any person within the covered jurisdiction who might otherwise be required to resort to the changed election procedures. Cf. *J. I. Case Co.* v. *Borak,* 377 U.S. 426.

In effect, Congress made each such person a potential private attorney general, by endowing him with standing to sue under Section 5 to determine whether newly adopted election procedures are subject to preclearance. The Act's ultimate purpose to enforce the Fifteenth Amendment is advanced as effectively by such private suits as it is when the Attorney General sues. Cf. *Trafficante* v. *Metropolitan Life Insurance*

Co., 409 U.S. 205, 211. The cause of action thus created meets both constitutional and prudential standing requirements, for as the Court recently noted in *Warth* v. *Seldin,* 422 U.S. 490, 501:

> Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules. Of course Art. III's requirement remains: the plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants. *E.g., United States* v. *SCRAP,* 412 U.S. 669 (1973). But so long as this requirement is satisfied, persons to whom Congress has granted a right of action, either expressly or by clear implication, may have standing to seek relief on the basis of the legal rights and interests of others, and, indeed, may invoke the general public interest in support of their claim. *E.g., Sierra Club* v. *Morton, supra,* at 737; *FCC* v. *Sanders Radio Station,* 309 U.S. 470, 477 (1940).

Appellants' contentions with respect to standing fail to recognize the important distinction between the substantive question whether the new procedures have a racially discriminatory purpose or effect, and the remedial question whether these procedures must be precleared. *Allen* v. *State Board of Elections, supra,* makes clear (393 U.S. at 555–556, n. 19) that the standing considerations bearing on the latter question are completely different from those bearing on the substantive issue. Compare *Trafficante* v. *Metropolitan Life Insurance Co., supra.* Only the remedial preclearance question under Section 5 is involved here. As to

that, racially discriminatory purpose and effect are irrelevant. It follows that appellees, as registered voters and candidates, were not required to allege that they were victims of racial discrimination in order to have standing to enforce Section 5.

2. The appellants further contend that appellees are estopped to contest the validity of the municipal election of March 24, 1973, because of their participation in it as candidates. The district court correctly rejected this contention on the basis of the Fifth Circuit's *en banc* decision in *Toney* v. *White,* 488 F. 2d 310. That decision reflects the considerations governing the setting aside of elections for violation of the Voting Rights Act established in *Perkins* v. *Matthews,* 400 U.S. 379, 396–397.

In *Toney,* a group of voters sued to set aside the results of a municipal primary election because a voting registrar had discriminated against black voters in purging the voting lists. The discrimination had occurred within thirty days prior to the election. A panel of the court of appeals affirmed the granting of prospective injunctive relief, but held that the circumstances did not warrant setting aside the election because the discrimination was not gross and the plaintiffs had not shown that they had no pre-election judicial remedy. 476 F. 2d 203, 209. The court *en banc,* however, concluded that the election should be set aside. It agreed with the panel that "the law imposes the duty on parties having grievances based on discriminatory practices to bring the grievances forward for pre-election adjudication. * * * [F]ailure to require prompt pre-election action in such circumstances as a prerequisite to post-election relief may permit, if not encourage, parties who could raise a claim 'to lay by and gamble upon receiving a favorable decision of the electorate' and then, upon losing, seek to undo the ballot results in a court action." 488 F. 2d at 314. Nevertheless, the court concluded that as between permitting misfeasance or nonfeasance by voting officials to frustrate the constitutional rights of black voters, and the requirement that those with grievances not await the outcome of elections, protection of the right to vote was paramount. It therefore held that election authorities have "a heavy burden * * * to show that there was a deliberate bypass of pre-election judicial relief" in order to avoid having the election set aside. 488 F. 2d at 315.

That standard, we submit, is as appropriate for patent evasions of the Voting Rights Act's preclearance requirements as it is for unconstitutional discrimination against black voters. Nor does it matter that those complaining are unsuccessful candidates who were overwhelmingly defeated in the invalid election. As we have shown above, Congress conferred standing to vindicate the policy of the Act upon "any person" forced to resort to uncleared procedures. A less stringent standard than clear and convincing proof of a deliberate bypass of a pre-election judicial remedy would, as the Fifth Circuit observed in *Toney,* hamstring the administration of the Act. 488 F. 2d at 315.

Appellants fell far short of such proof. With municipal elections but five weeks away, the State Attorney General advised on February 18, 1973, that the federal district court had declared Act 106 " 'to be illegal and inapplicable' " to the election in Lake Charles, Louisiana; that "it is my opinion" that this determination "should be applied * * * uniform[ly] to the 63 municipalities involved"; and that if "we proceeded with the 63 other elections under Act 106, we would run the risk of having these contests voided by subsequent court action" (App., *infra,* p. 6A). Upon learning that this opinion was only advisory, Sorrento opted to proceed under Act 106 on February 26, 1973, less than a month before the election. It was the only municipality to do so. For persons participating in the election the situation was obviously confused. The district court found that around February 2, 1973, two of the appellees filed a second set of papers to qualify for at-large elections under the old procedure, and a third town had chosen to ignore the district court's *Lake Charles* decision and the State Attorney General's advice, a pre-election suit might have compounded the confusion and damaged the candidacy of the complainants.

Given the importance to the statutory scheme of the rights sought to be vindicated, the district court's judgment was well within its discretion under the guidelines for new elections laid down in *Perkins* v. *Matthews, supra,* 400 U.S. at 396. The Court observed there that the "[f]ailure of affected governments to comply with the statutory requirement would nullify

the entire scheme," and that such governments "rather than citizens seeking to exercise their rights, bear the burden of delays in litigation" (*ibid.*).

Here, the changes were plainly invalid under Section 5 (see n. 5, *supra*). The town officials could be in no doubt that the procedures of Act 106 were ineffective until cleared under Section 5, and that the election could be set aside if conducted under Act 106. Under *Perkins,* the district court, which was "familiar with the nuances of the local situation" and "has heard the evidence in this case" (400 U.S. at 397) had the primary remedial responsibility, and correctly exercised it.[6]

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
J. STANLEY POTTINGER,
Assistant Attorney General.

April 1976.

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[6] We note that an alternative form of relief also suggested in *Perkins*—providing "local officials an opportunity to seek federal approval" and requiring new elections only if they fail to do so or if federal approval is denied (400 U.S. at 396–397)—would be superfluous here. The Attorney General objected to Act 106 within a month after the election (App., *infra,* pp. 15A–17A), and local officials have clearly indicated that they will not voluntarily conduct new elections in Sorrento.

APPENDIX

STATE OF LOUISIANA,
SECRETARY OF STATE,
Baton Rouge, February 16, 1973.

Hon. WILLIAM J. GUSTE, Jr.,
Attorney General of Louisiana, State Capitol, 22d Floor, Baton Rouge, La.

DEAR MR. GUSTE: I am requesting your opinion relative to the effect of the case of Wilfred Lada et al vs. the City Council of the City of Lake Charles et al, decided yesterday by the Honorable Edwin F. Hunter, Judge, United States District Court for the Western District of Louisiana, Lake Charles Division.

Ballots for the primary election for the Lake Charles City Councilmen, which were involved in this suit, are now being prepared under the old laws in effect prior to the adoption of Act 106 of 1972 which was declared ineffective for the reason that it was not submitted to, and favorably acted upon, by the United States Department of Justice.

My questions are as follows:

In view of this decision in the case involving the City Council of Lake Charles, does this decision affect the ballot in the City of Lake Charles for municipal committeemen, and does the decision affect our procedures in printing ballots for the remaining 63 municipalities in the State of Louisiana in the case of candidates having previously qualified by "divisions" for party committees, councilmen or aldermen?

Time is of the essence because we have already commenced the printing of ballots for these elections last Monday, and each day's delay will reduce correspond-

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ingly the number of days available for voting by individuals in the United States Service voting by mail, and further delays could affect regular absentee voting in person and even eventually voting on voting machines.

Your reply at the earliest possible moment will be appreciated.

Yours very truly,

WADE O. MARTIN, JR.,
Secretary of State.

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
New Orleans, February 18, 1973.

HON. WADE O. MARTIN, JR.,
Secretary of State,
State Capitol Building,
Baton Rouge, La.

DEAR MR. MARTIN: I am in receipt of your request for an opinion regarding the recent decision of *Wilfred Lada, et al.* v. *City Council of the City of Lake Charles, Louisiana,* (Civil Action No. 18,275) rendered February 16, 1973 by United States District Judge Edwin F. Hunter, Jr., (Western District of Louisiana, Lake Charles Division) holding Act 106 of 1972 inapplicable to the election of City Councilmen in Lake Charles.

In your letter you specifically ask whether the decision in the *Lada Case* effects the ballots in the City of Lake Charles for municipal committeemen, and the ballots for the remaining 63 municipalities in the State of Louisiana in the case of candidates having previously qualified by court division for party committee, councilmen or aldermen.

LSA–R.S. 18:309E specifically provides that:

> E. Whenever in any district, parish, municipality or ward of the state there are two or more offices of the same kind of character to be filled from the same district, parish, municipality or ward, each candidate from the district, parish, municipality or ward, including candidates for membership on political party committees, shall be required to qualify

for and be a candidate for a division within the district, parish, municipality or ward. Within each such district, parish, municipality or ward there shall be as many divisions as there are positions to be filled. The committee before whom the candidate is required to qualify or the secretary of state, if the candidate is required to qualify before the secretary of state, shall assign a letter designation for each such division.

This Act shall become effective on and after January 1, 1973. Added by Acts 1972, No. 106, § 1, eff. Jan. 1, 1973.

There is no doubt that R.S. 18:309E as enacted in Act 106 of 1972, constitutes an alteration of voting qualifications and procedures within the meaning of Title 42 USCA section 1973c of the Federal Voting Rights Act which provides:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, such State or subdivision may institute an action in the United

States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Hence, the inevitable concomitant was the judgment rendered in the *Lada Decision* declaring Act 106 of 1972 (R.S. 18:309E) illegal and inapplicable inasmuch as an action for declaratory judgment was not filed in the United States District Court for the District of Columbia, nor was approval granted by the Attorney General of the United States in accordance with the provisions of Title 42 USCA section

1973c. Accordingly, Title 42 USCA section 1973c preempts Act 106 of 1972.

As you know, the Act is under submission to the Attorney General of the United States and there is a very real possibility that the Civil Rights Division of the U.S. Department of Justice will not approve Act 106 of 1972. In any event, they will not act on the matter with sufficient promptness to enable city councils or other political subdivisions to await such action.

Therefore, it is the opinion of this office that Act 106 of 1972, (R.S. 18:309E) should not be applied with respect to any other election that might be held within the remaining 63 municipalities in the State of Louisiana or to the printing of the ballots pursuant thereto.

In conclusion, it is my opinion that paragraph 2 of Judge Hunter's order in the *Lada Case* should be applied to Lake Charles and uniformally to the 63 municipalities involved, as follows:

> 2. The candidates . . . in the Democratic Primary election to be held on March 24, 1973, shall run at large . . . and not by divisions as provided by Act 106 of the 1972 Session of the Louisiana Legislature, LSA–R.S. 18:309E which is hereby declared to be illegal and inapplicable to this election.

The reasons for taking this position are manifest. If, for example, we proceeded with the 63 other elections under Act 106, we would run the risk of having these contests voided by subsequent court action. Conversely, by maintaining the status quo prior to the enactment of Act 106, there is less risk of putting the outcome of any election contest under a cloud of doubt.

If we can be of any further assistance to you, please do not hesitate to contact this office.

Very truly yours,

WILLIAM J. GUSTE, JR.,
Attorney General.

Certified true copy:

KENNETH C. DEJEAN,
Chief, Civil Division,
Assistant Attorney General.

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, February 19, 1973.

TELEGRAM SENT TO: CHAIRMAN OR SECRETARY OF EACH MUNICIPAL EXECUTIVE COMMITTEE

On February 18, 1973, I issued an opinion to Honorable Wade O. Martin, Secretary of State, in regard to the applicability of Act 106 of 1972 to all elections to take place on March 24, 1973.

In light of the federal courts opinion rendered on February 16, 1973 in holding Act 106 illegal and inapplicable to Lake Charles, it was my opinion that the federal court order should be applied uniformly to the other 63 municipalities involved.

Therefore, you should re-open filing for all qualified persons including but not limited to those persons who have already filed as candidates who must re-file if they wish to be candidates. Filing is to be re-opened at 10:00 A.M. Wednesday, the 21st of February. Filing shall be closed at 5:00 P.M. on Friday, the 23rd of February.

Certification of the candidates filing for election should be sent to the Secretary of State immediately after the close of business Friday, that is, 5:00 P.M., February 23, 1973.

(Signed) WILLIAM J. GUSTE, JR.,
Attorney General.

Certified true copy:

KENNETH C. DEJEAN,
Chief, Civil Division,
Assistant Attorney General.

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, February 22, 1973.

Hon. WADE O. MARTIN, Jr.,
Secretary of State, State Capitol,
Baton Rouge, La.

DEAR MR. MARTIN: In answer to your letter of February 22, I understand that you have requested an opinion as a corollary to the Attorney General's opinion of February 18, in regard to *Wilfred Lada, et al* v. *City Council of the City of Lake Charles,* and its effect on Act 106 of 1972. The purpose of the opinion of February 18, in addition to answering the questions posed in your letter to the Attorney on the effect of Judge Hunter's decision in the latter case, was to establish uniformity.

As the Attorney General stated in his letter to you of February 18, page 3, "Therefore, it is the opinion of this office that Act 106 of 1972, (R. S. 18:309 E) should not be applied with respect to any other election that might be held within the remaining 63 municipalities in the State of Louisiana or to the printing of the ballots pursuant thereto."

In conclusion, the Attorney General stated in his letter of February 18, that the decision in the latter case should apply to Lake Charles and *"uniformly to the 63 municipalities involved."* (Emphasis supplied).

Therefore, in keeping with the intent of the Attorney General's opinion of February 18, to assure uniformity in the forthcoming primary to be held on March 24, the printing of the ballots should reflect that uniformity.

However, since all opinions of the Attorney General are only advisory, if a municipality insists on holding elections for at-large positions pursuant to Act 106 they should be permitted to do so.

Very truly yours,

WILLIAM J. GUSTE, Jr.,
Attorney General.

By KENDALL VICK,
Assistant Attorney General.

Certified true copy:

KENNETH C. DEJEAN,
Chief, Civil Division,
Assistant Attorney General.

FEBRUARY 26, 1973.

Re: Town of Sorrento, Democratic Primary Election—March 24, 1973.

Hon. WADE O. MARTIN, Jr.
Secretary of State,
State of Louisiana,
State Capital Building,
Baton Rouge, La.

DEAR SIR: This will advise you that the Democratic Executive Committee for the Town of Sorrento has decided not to re-open qualifications for municipal offices, as suggested by the Attorney General's opinion on this matter.

It is therefore respectfully requested that you print the Town of Sorrento ballot for the candidates previously certified by this committee, all in accordance with the supplemental opinion on this question rendered by the Attorney General on Thursday, February 22, 1973.

Thank you for your cooperation.

Yours very truly,

EMILE R. LAMBERT,
Chairman, Town of Sorrento,
Democratic Executive Committee.

DEPARTMENT OF JUSTICE,
Washington, D.C., April 20, 1973.

Hon. WILLIAM J. GUSTE, JR.,
Attorney General, State of Louisiana,
Department of Justice,
Baton Rouge, La.

DEAR MR. ATTORNEY GENERAL: This is in reference to Act 106 submitted by you to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. We received your submission on February 19, 1973. Act 106 provides for the use of divisions or numbered posts for all multi-member bodies in districts, parishes, municipalities, and wards in the state.

Our analysis of this matter reveals that Act 106 would impose a numbered-post requirement on present Louisiana election procedures for multi-member offices. In our view the electoral system as modified by Act 106 significantly reduces the potential for minority candidates to win representation in multi-member offices in jurisdictions such as Louisiana where there has been a pattern of racial bloc voting. The Attorney General has interposed objections under Section 5 of the Voting Rights Act to similar numbered-post systems in a number of other jurisdictions. We are accordingly unable to conclude, as we must under the Voting Rights Act, that implementation of 106 will not have a discriminatory racial effect and therefore I must, on behalf of the Attorney General, interpose an objection under Section 5. As the law provides, Act 106 may be brought before the District Court for

the District of Columbia notwithstanding this objection and may be implemented should that Court grant a declaratory judgment that the Act will have neither the purpose nor effect of discrimination on the basis of race.

While we accept and appreciate the fact that the legislative purpose in passing this statute was to simplify and expedite the election process, Section 5 requires us to examine the effect as well as the purpose of such changes. Should the legislature choose to make other revisions of this type we would be pleased to give the matter prompt consideration.

Inasmuch as the United States District Court for the Western District of Louisiana has deferred proceedings in *Lada* v. *City Council of Lake Charles* (CA No. 18,275) involving Act 106 until the Attorney General completed his review, and *Reine* v. *Town of Sorrento Municipal Democratic Committee* (CA No. 73–120), challenging an election held pursuant to Act 106, has been recently filed in the United States District Court for the Middle District of Louisiana, I am taking the liberty of furnishing a copy of this letter to both Courts. However, nothing contained herein should be construed in any way as addressing the constitutional issues pending before those Courts.

In view of your opinion of February 19, 1973, suspending the application of Act 106 to 63 municipal primaries held March 24, 1973, and the statement of Mr. Kenneth C. DeJean of your office in his telephone conversation with departmental attorney Joshua R. Treen on March 12, 1973, that the suspension would be effective through all runoffs necessitated by the results of the March 24 primaries, we would appreciate being notified whether you will extend the prohibition

on the use of Act 106 to any other election, including the municipal general elections to be held this year.

Sincerely,

J. STANLEY POTTINGER,
Assistant Attorney General,
Civil Rights Division.

Certified true copy:

KENNETH C. DEJEAN,
Chief, Civil Division,
Assistant Attorney General.

U.S. GOVERNMENT PRINTING OFFICE: 1974